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# Laws for Journalists in India: An Overview

Priyal Shah and Aakanksha Chaturvedi



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## ABSTRACT

India has seen a significant rise in attacks against and killings of journalists in recent years, making it an increasingly hostile place to practice journalism. In the last two decades, India's ranking on the World Press Freedom Index dropped from 80th to 142nd. This issue brief discusses the shortcomings in the Indian legal framework in creating a safer environment for media persons. The brief also discusses the deteriorating nature of journalistic norms and the role

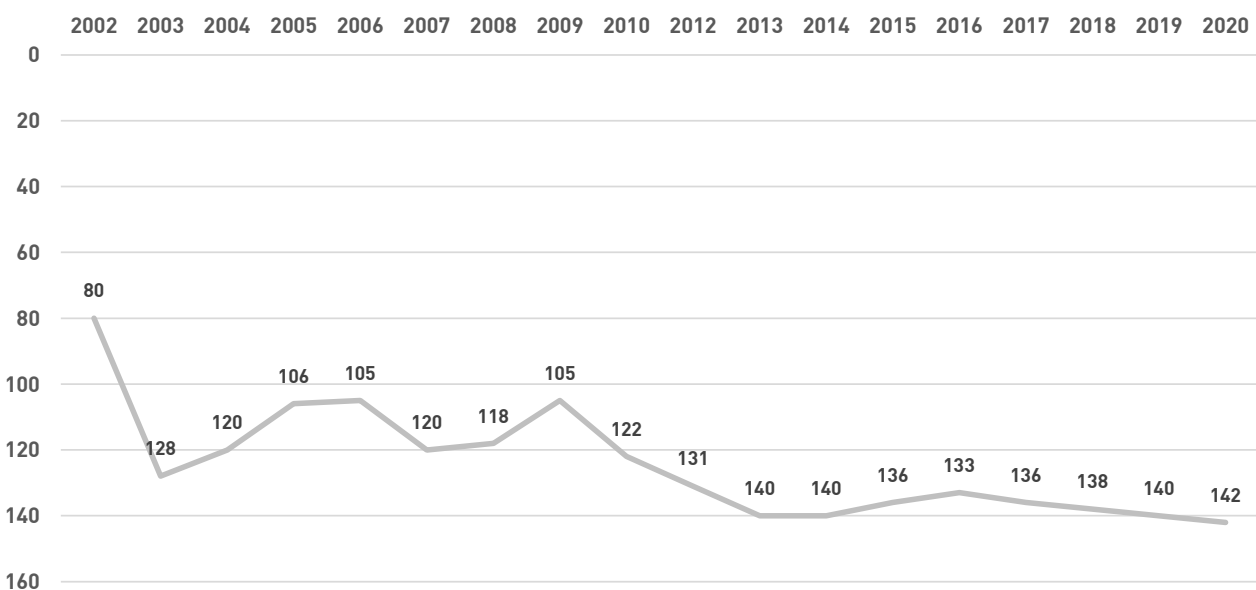
## BACKGROUND

Journalism, the fourth pillar of democracy, underpins sound governance and democratic accountability. The Indian Parliament defines a journalist as a person employed by a newspaper establishment as an editor, writer, reporter, correspondent, photographer, or proof-reader (Working Journalists and other Newspaper Employees and Miscellaneous Provisions Act 1955). Maintaining the safety of journalists is crucial to facilitating the exchange of information and news on matters of public interest.

Over the years, there has been a steep decline in India’s performance on international indices that measure relative press freedom across countries. In December 2020, India featured in Reporters Without Borders’ (RSF) list of *Five Deadliest Countries*<sup>1</sup>. In their first World Press Freedom Index published in 2002, India’s rank was 80th, and in the latest report (Reporters Without Borders 2020), the rank dropped to 142 out of 180 countries (see figure 1 below).

For the World Press Freedom Index, RSF uses quantitative and qualitative data to rank 180 countries. The former is derived by calculating reported attacks and violence on journalists. For the qualitative data, a questionnaire is sent to an expert team consisting of media professionals, lawyers and sociologists, across many countries. The questionnaire studies seven categories: Pluralism, Media Independence, Self-censorship, Legislative Framework, Infrastructure, and Abuse. Based on them, two scores are calculated — ScoA (calculates the first six factors) and ScoB (all the factors). The final score is the greater of these two scores. This distinction is made to ensure a country with low violence but high censorship would not receive an overall low score (high rank).

**Figure 1: India’s Ranking in the RSF’s World Press Freedom Index**



Source: RSF’s World Press Freedom Index (n.d.)

<sup>1</sup> The other four countries in RSF’s 2020 Round-up are Mexico, Iraq, Afghanistan and Pakistan.

The Global Impunity Index created by Committee to Protect Journalists (2020) [CPJ] ranks countries where journalists' murders receive complete impunity. The Global Impunity Index is calculated by taking a percentage of the number of impunities received for journalists murdered per million population. The index was first compiled in 2008, and since its inception, India has consistently featured in the list.

For the index, it displays only those countries where five or more unsolved cases have been committed. The list features only those cases where the cause of journalists' death is linked to their work. The index does not include cases where partial justice or partial impunity is obtained, i.e., if some perpetrators are convicted and not all. It does not include journalists who die while on dangerous assignments or during combat.

**Table 1: Comparing South Asian countries according to CPJ's Impunity Index**

	INDIA	PAKISTAN	AFGHANISTAN	BANGLADESH
2008	13th	12th	7th	11th
2009	14th	10th	7th	12th
2010	12th	10th	6th	11th
2011	13th	10th	6th	11th
2012	12th	10th	7th	-
2013	12th	8th	6th	-
2014	13th	9th	6th	-
2015	14th	9th	7th	12th
2016	13th	8th	7th	11th
2017	12th	7th	-	10th
2018	14th	9th	6th	12th
2019	13th	8th	6th	10th
2020	12th	9th	5th	10th

Source: Committee to Protect Journalists (2008-2020)

The UNESCO Observatory of Killed Journalists confirms the deaths of 45 Indian journalists between 1996 to 2020 (UNESCO n.d.). However, a national study conducted by Thakur Foundation (2019) records 40 journalist deaths in 2014-19 itself. Their report 'Getting Away with Murder' reveals that 198 severe attacks on journalists<sup>2</sup> also took place in the same time frame. Their study observed the increased attacks and deaths of journalists and the subsequent status of receiving justice in 63 instances. Out of 63 cases, only 25 had lodged an FIR,

<sup>2</sup> Attacks took place while covering/reporting the event or while the journalist was involved in an investigative work.

out of which 18 had received no progress. In 3 cases, counter complaints were registered against the journalist.

Not only is it hard to keep track of journalist deaths as the government maintains no official data<sup>3</sup>, but their justice is delivered at a sluggish pace. The International Federation of Journalists (2018) affirms this, noting the case of Ram Chander Chhatrapati, a journalist who had exposed Gurmeet Ram Rahim and received justice 16 years after his death. This was the only case resolved amongst 55 cases pending since 2010.

Such instances of delayed justice highlight the lack of coherent legal framework or assistance that the Indian judicial system has for the safety of journalists. On the contrary, many legal elements and laws create more trouble and restrictions for the journalist while they attempt to report freely.

## MEDIA LAWS

There is no specific law catering to the profession and practice of journalism in India. Article 19 (1) (a) of the Indian Constitution offers Freedom of Speech and Expression to every citizen. The Press Council of India (PCI) draws the validity and right for the freedom of the press from the ambit of the same article. The second clause to Article 19 adds certain restrictions, these also apply to journalists, and hence the freedom conferred by law can be stripped if the speech violates the sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency and morality, contempt of court<sup>4</sup>, incitement to an offence, and defamation<sup>5</sup>.

Defamation, particularly, has been one of the key hurdles for practising journalists in the country. Under section 501 of the Indian Penal Code (IPC), printing defamatory matter can lead the offender to imprisonment of up to two years, with a fine or both.

Similarly, the Indian Penal Code (IPC) Section 124A on sedition states that any written or visual attempt to stir hatred, contempt, or disaffection in a community or towards the government can lead to life imprisonment. The Section 124A of IPC or Sedition refers to:

*“words, either spoken or written, or by any signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law.” (IPC Section 124A)*

In essence, the law prohibits any form of verbal or written protest against the government. Justice Madan Lokur, a former Supreme Court judge, while giving a lecture on preserving and protecting Fundamental Rights and Freedom of Speech, claimed that sedition “is not being misused, but is being abused” (Press

<sup>3</sup> The National Crime Records Bureau [NCRB] includes no report on crime against journalists as the available data is “vague/unreliable” (National Crime Records Bureau 2017).

<sup>4</sup> The Contempt of Courts Act, 1971

<sup>5</sup> Also defined under Section 499 of the Indian Penal Code and The Defamation Act, 1952

Trust of India 2020). Justice Sanjay Kishan Kaul and Justice Hemant Gupta, while dismissing sedition charges on Farooq Abdullah who had asked to scrap Article 370, have noted that “Expression of views which are different from the opinion of the government cannot be termed as seditious. It cannot become sedition only because one has a different view” (Anand 2021).

Sedition, originally a colonial law, was initially used by the British Government to stifle Indian voices. Despite amendments and changes in many pre-independence laws, there have been no changes in this law. The British Government itself has not used the sedition law in the UK since 1972 and has scrapped it all together in 2009. According to the Human Rights Watch (2016) due to its ambiguous nature, sedition is prone to be used to silence dissent for political purposes.

Sedition is widely being used to prosecute critics of the Indian government. The use of sedition law has drastically increased since 2014. According to Purohit (2021), Article 14’s Sedition Database from 2010-20 reveals 96% of all sedition cases filed for criticising politicians were registered after 2014. Between 2010-14, 249 cases of sedition were filled on an estimate of 3762 individuals, whereas 519 cases were filled on roughly 7136 individuals between 2014-20 (ibid). NCRB data on sedition claims a sharp rise in cases since it started collecting data in 2014, but with a fall in conviction rate. The number of cases rose from 51 to 93 in 2017-19 (Ghose 2020).

Recently, various journalists like India Today’s Rajdeep Sardesai, Qaumi Awaz’s Zafar Agha, National Herald’s Mrinal Pande, and Caravan Magazine’s Paresh Nath, Anant Nath, and Vinod Jose were charged under sedition law. According to Purohit (2021), nearly 30% of the FIRs registered for sedition are combined with other laws. Many restrictions (see Table 2 below), along with sedition, are placed to curtail journalists’ freedom of speech.

**Table 2: List of Restrictions Used Aside from Sedition**

Section 153A	Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc.
Section 153	Imputations, assertions prejudicial to national integration
Section 171G	False statement in connection with an election
Section 228	Intentional insult or interruption to public servant sitting in judicial proceeding
Section 505	(i) Statements conducing to public mischief (ii) Statements creating or promoting enmity, hatred or ill-will between classes

Source: Press Council of India (2010)

Despite 71 years of the Constitution recognising basic freedoms, a lack of proactive lawmaking for journalists has resulted in only one government-recognised institution, the Press Council of India, for press freedom.

## Press Council of India

On the recommendation of the First Press Commission, Parliament set up the Press Council of India in 1966. It served the purpose of ‘preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India’ (Press Council Act 1978).

PCI is composed of a Chairman and twenty-eight members whose primary task is to act as the ‘Court of Honour’. It remains, for the most part, a statutory body that suggests recommendations instead of rules. If PCI finds the work of any newspaper or news agency offending “journalistic ethics<sup>6</sup> or public taste”, it could “warn, admonish or censure the newspaper or news agency” (Press Council of India 2010).

The Hoot, a media watchdog that conducted research to study media in the subcontinent, has reported that many cases taken up by the PCI were after a gap of three to four years<sup>7</sup>; in which, out of the 90 decisions declared, 54 cases were either dismissed or dropped (Akoijam 2012). Seeing the shortcomings in its own organisation, PCI, in a report addressing the safety of journalists, mentioned that attacks on journalists should “be investigated by a special task force” (Press Council of India n.d.: 19).

To date, no special task force has been allocated to the PCI, and its role has been limited to a statutory body. This leads to an over-accumulation of cases for the PCI and an inability to deliver justice. Albeit one of its objectives is to preserve the Freedom of the Press, it fails to deliver on it.

In 2019, Kashmir Times’ executive editor Anuradha Bhasin had petitioned in the Supreme Court to relax and free movements of media persons and journalists. Instead of supporting the freedom of press, PCI stated that the restrictions were “in the interest of the freedom of the press as well as in the national interest” (IANS 2019) and prescribed self-regulation on reporting by journalists (Global Freedom of Expression n.d.)

Instances like this curtail journalists’ ability to report freely on matters of public attention. PCI’s limited role has led to a failure in securing the freedom of journalists and their profession. Seeing the void in the Centre’s legal system, few states have begun to pass acts and bills for ensuring the safety of journalists, as discussed below.

## MAHARASHTRA MEDIA PERSONS ACT

The first state-level law for journalist safety was the Maharashtra Media Persons and Media Institutions (Prevention of Violence and Damage or Loss to Property) Act. It was passed in the assembly in 2017 and received the President’s consent in 2019 (Maharashtra Media Persons and Media Institutions Act 2017). The Act aims to control the onslaught of violence on media persons and media institutions

<sup>6</sup> As mentioned in ‘Press Council of India 2010’.

<sup>7</sup> Out of 90 cases 40 complaints were registered before 4 years.



and any damage to their property in Maharashtra. The Act defines media persons and media institutions as follows:

Media Person	Media Institution
is an Editor, Sub-Editor, News Editor, Reporter, Correspondent, Cartoonist, News-Photographer, Television Cameraman, Leader-Writer, Feature-Writer, Copy-tester and/or Proof-Reader	is any Newspaper Establishment, News Channel Establishment, News-based Electronic Media Establishment and/or News Station

The Act promises to protect any “movable or immovable” property and “equipment or machinery” belonging to a media person/institution. Any act of violence against media persons/property can lead to imprisonment up to 3 years and/or a fine up to 50,000 rupees for the offender. Yet, in the case of Raghavendra Dube, no offender was imprisoned while the journalist was covering attacks on two journalists in Mira Road. He was found dead five hours after leaving the police station (FP Staff 2015).

The Act dictates the offender liable to pay the compensation of damaged property. The Act also makes the offence non-bailable whose investigation can be carried by a police officer, not below the rank of Deputy Superintendent and will be triable by a first-class magistrate. Getting a higher police officer to investigate would have been beneficial in the case of Ashish Raje, who was allegedly manhandled by two police officers (PTI 2020).

### Shortcomings

Despite the step in the right direction, this Act does not cover bloggers, freelancers and social media journalists as they are not in alliance with any media institution (Seshu 2017). Maharashtra’s Balasahed Navgire, a freelance reporter, was attacked by a mob, but even after launching an FIR, no arrests were made (PTI 2020). They also note that the Act weakens the punishment prescribed by IPC Section 326 and 307, which are for grievous assault and attempted murder, respectively.

Moreover, the Act also doesn’t feature any repercussions on virtual harassment or trolling faced by journalists using non-traditional methods of journalism. In today’s digital age, not safeguarding those reporting online makes a large section of journalists vulnerable. Senior journalist Sagarika Ghose mentions, “The biggest problem they [trolls] have is with journalists, then liberal journalists, and liberal women journalists are target number one” (Nandkeolyar 2018).

It also doesn’t feature any mandate towards harm done while the person is not on duty. People could further exploit this loophole to harm the journalist before or after doing their job. As observed in the case of Gauri Lankesh and Raghavendra Dube, the act of violence is also committed while the journalist is on duty.

Furthermore, no body or institution is created to ensure that justice is delivered after the demise of journalists. The immediate family or kin of the journalist is not accounted for. The Act also does not mention where the funds or legal assistance will be procured from for the journalists.

The Act asks the offender to pay a penalty under ‘Liabilities to pay compensation for damage or loss caused to property’; however, the offender is often not caught. The police also tend to turn a blind eye in case someone influential is involved. There has to be a non-local establishment where the report can be filed to avoid the loopholes mentioned above. An option to file the report remotely should be provided to the victim, along with a monthly audit of the cause.

### Implementation

So far, there is no statement or data available regarding the beneficiaries or changes brought about by the Media Persons Act in Maharashtra. The Wire’s Shantha (2020) tracked 15 instances during the COVID-induced lockdown where journalists were restricted from reporting in Maharashtra. In all 15 cases, Maharashtra Media Persons Act was not utilised. Majumder (2019) notes Niranjan Takle’s opinion that this journalism protection law has not been implemented successfully.

## CHHATTISGARH PROTECTION FOR JOURNALISTS BILL

The People’s Union for Civil Liberties Chhattisgarh has proposed a Bill titled “Chhattisgarh State Commission for Protection of Journalists and Human Rights Defenders” (Media Vigil 2016). The implementation of this Bill will form an autonomous body ensuring that legal and financial assistance is provided to those who face difficulties while exercising freedom of speech. This Bill is the first in India to receive support from politicians campaigning for journalist safety and winning an election for it (Majumder 2019).

**Table 3: Definition provided in Chhattisgarh State Commission for Protection of Journalists and Human Rights Defenders (Media Vigil 2016)**

Journalist	Media
Any person who makes the exercise of freedom of expression and /or dissemination of information, his primary, substantive or significant activity	Any means of communication used regularly for purposes of dissemination of information and expression of views and opinions such as the print media, digital media

Source: Media Vigil (2016)

Any case admitted to the committee will be analysed for its potential risk. After risk assessment<sup>8</sup>, the case wherein the journalist’s life is in imminent danger will be met with “extraordinary procedures”. In such high-risk cases, the governing body will study and procure “Urgent Protection Measure” within 3 hours of admission of cases. The plan will be implemented within 9 hours of it being devised.

If danger is not immediate, then the committee will employ “Ordinary Procedures”. The risk assessment would have to be submitted to the governing

<sup>8</sup> An instrument will be devised that will count the degree of risk in any case

body within ten days of arrival. The governing body will then draft the measures within one week.

The governing body can forward some cases to the special investigative unit. This unit will be established to track certain cases where the involvement of police or authorities are involved in harming the journalist. This could be useful as journalists like Prabhat Singh of Patrika are put behind bars for allegedly posting an “obscene message” about a senior police officer on WhatsApp group (Ghosh 2016).

This Bill ensures that any journalist<sup>9</sup>, along with their immediate family<sup>10</sup>, will be provided with security and sustenance during risks or threats. Such guidelines would prove helpful in the cases such as Sheikh Anwar’s, where he and his wife were arrested for allegedly obtaining ammunition for Naxals (IBNLive 2012). The Bill also has the feature to launch an investigation or enquiry into suspected cases. The Bill gives the governing body the power to seek from any state authority/body relevant documents for the case.

## Shortcomings

Journalists have hugely praised this draft as it employs a liberal definition that includes freelancers and bloggers<sup>11</sup>. According to the Reuters Institute, 56% of people under age 35 consume news online, while 28% access social media for daily news consumption (Aneez et al., 2019). While the Bill includes a growing section of online journalists, it also adds in its committee retired judges and police officers to protect journalists. Mishra (2020) questions here the role the composition of the committee will play in delivering justice.

There is no mention of the budget or the amount the State will provide for such an expensive Act to function properly. Nor does it disclose the location or place from where the functions of the committee will take place.

Another issue with the Bill is that it specifies the governing body having 8-12 members, but there is no mention of whether the governing body will have a hierarchy or will make uniform decisions. Nor is there a mention of how the seats would be distributed amongst the Home Department, members of the Press, State Human Rights Commission, Civil Society Organisations with a mandate for securing Human Rights, and retired judges from the Chhattisgarh High Court. The Bill also makes no mention of how the special investigative unit will be formed. There is no explanation of how the said officers would be recruited or trained or of their eligibility and the number of positions allocated to the unit. Another flaw with the special investigative unit, a unit specifically created for cases where police/authorities are involved in murder, is that it is placed under the governing body’s command presided by retired judges and home department members.

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<sup>9</sup> The qualification of a journalist is so liberal that anyone with five published articles in the last six months or anyone paid by any publisher in the last three months is counted.

<sup>10</sup> Partner by marriage or otherwise

<sup>11</sup> Not covered / protected by the Press Council Act.

Involving people who are a part of the machinery (i.e., police officers, judges, etc.) may cause a conflict of interest, given that instances where they might be under the pressure or influence of politicians or people in power are bound to happen. As was seen in the Banker region of Chhattisgarh, where the police denied to report violence on Bhunkal Samachar's editor Kamal Shukla by Congress members (Mishra 2020).

However, the biggest hurdle would be to pass this Bill on the legislative floor, which consists of politicians who often have incompatible motives. Passing a bill that would empower and strengthen a journalist's position against them would create a conflict of interest. Furthermore, there is a strong possibility that the legislators may strip the defining and protective features in the Bill. In the end, this Bill's ability to protect journalists "boils down to the state's intent" (Subramaniam 2020).

## Responsibilities of a Journalist

On the issue of press freedom, Jawaharlal Nehru had mentioned the danger complete freedom entails, stating, "If there is no responsibility and no obligation attached to it, freedom gradually withers away. This is true of a nation's freedom and it applies as much to the press as to any other group, organisation or individual" (Press Council of India n.d.). The press has to maintain norms of professionalism to help them guide with "their role, their rights and obligations and how they can best perform their job" (UNESCO n.d.).

Under section 13 (2)(b) of the Press Council Act, a code of ethics was developed for news media persons and journalists titled Norms of Journalistic Conduct. The document's role is to maintain "high public taste standards" and foster "responsibility towards the citizens" (Press Council Act 1978). It provides "principles and ethics" for the profession and "guidelines on specific issues" (Press Council of India 2010).

The press today is increasingly diverging from the standards prescribed to them. Journalism is filled with "alternative facts, untruths, fake news" where "only the loudest can be heard" (Shukla 2020). More sensational, voyeuristic, and false content is observed in the reporting (Shukla 2020). For instance, the widespread reporting of Sushant Singh Rajput and especially Rhea Chakraborty violates Norms of Journalistic Conduct part (A) section 6 of Right to Privacy, which states: The Press shall not interfere or invade an individual's privacy, except when it is outweighed by genuine public interest. In reports which are likely to stigmatise women, particular caution is essential (Press Council of India 2010).

## Media's Watchdog

PCI is a quasi-judicial body that serves the function of India's newspapers and news agencies' watchdog. During the emergency, many journalists' rights suffered, which forged a valuable lesson that the PCI is a mere parliamentary body. Recent activities of this body include demands for the title of "Corona Warriors" for journalists and urging editors to verify foreign content before publishing (PTI 2020). Yet, the PCI did not interfere when newspapers broke their ethics by falsely reporting the farmers' protests as "Khalistani" (Mustafa 2019).

Post emergency, in 1978, the Editors Guild of India was established by Kuldip Nayar to protect “press freedom and for raising the standards of editorial leadership” (Mustafa 2019). The Guild had successfully taken the issue of press freedom on a national level by organising protests during the 1986 Anti-Defamation Act and the 2001 Prevention of Terrorism Ordinance (Editors Guild n.d.). But over the years, the Guild has lost its initial resolve of protecting journalism, with Kuldip Nayar himself acknowledging that “we started giving up on what we stood for, and the Guild stopped functioning” (Mustafa 2019).

Many small organisations have relentlessly contributed to safeguarding the integrity of the profession and the safety of its journalists. Organisations like the Press Club of India, Mumbai Press Club, Press Association, and Delhi Union of Journalist have significantly contributed to the profession of journalism (The Citizen 2019). For instance, in the above-mentioned instances of Ashish Raje, the Press Club was able to draw a response by the Home Minister of Maharashtra (The Quint 2020) and for Raghavendra Dube, the Chief Secretary was involved (Punwani 2015).

## CONCLUSION

Freedom of the press is the cornerstone of any democracy. Yet we see the largest democracy become one of the most dangerous places for journalists. As such, it becomes crucial to guarantee protection to those exercising their freedom of expression professionally to benefit the masses by staying true to the ethics of the profession.

Seeing the plethora of rules and laws restricting and curtailing journalists’ freedom of speech must act as an instigator to formulate legal frameworks protecting journalists. Maharashtra and Chhattisgarh are the only states that have taken a step in this direction, albeit with varied flaws in their Act and Bill, respectively.

The impunity that offenders receive only highlights our need to take proactive steps to improve the status quo. The first step in this direction would be to introduce a standard set of media laws on a central level. The need here is not to have individual laws in states, but one unified law to monitor crimes against journalists and protect their rights.

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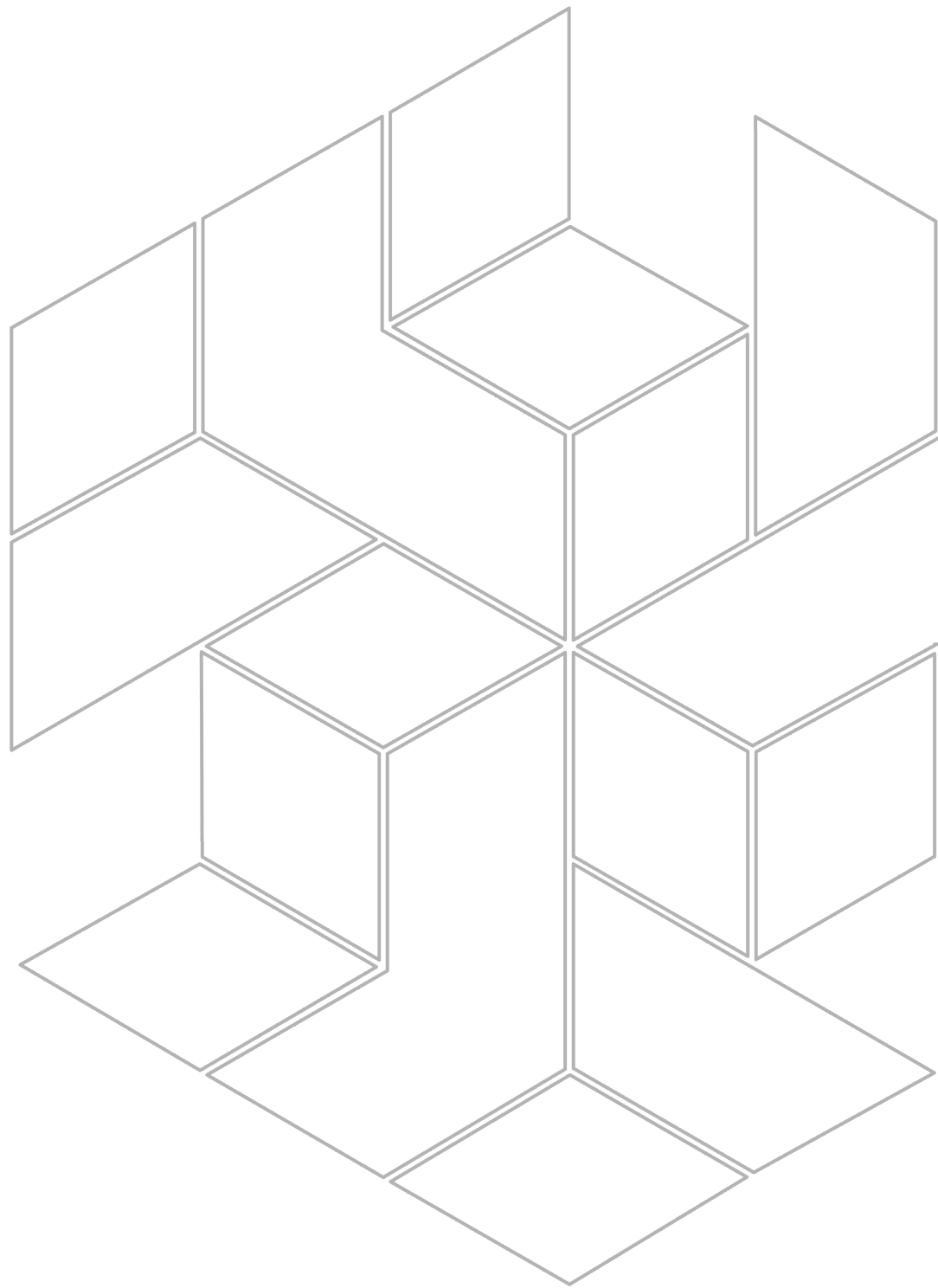
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